

REMARKS

Claims 18-23, 26-30 and 36-42 remain in this application. Claims 24-25 and 31-35 have been canceled, without prejudice. Claims 18-23, 26 and 28-30 have been amended. By these amendments, no new matter has been added.

Dependent Claims 19, 21-23, and 28-30 have been amended to correct informalities and to conform to changes made to their respective base claims. These claims have not been narrowed by these amendments. Independent Claims 18, 20, and 26 have been amended to correct informalities, to remove unnecessary limitations, and to more particularly point out the invention; therefore certain elements of these claims are also not narrowed.

At the outset, Applicants acknowledge with appreciation the Examiner's participation in a telephone interview on June 3, 2004, and the invitation to submit amended claims for further consideration. The present response is consistent with the arguments and proposed claim amendments advanced by the Applicants' attorney during the interview. Upon further review, the claims were also amended to correct certain informalities and unnecessary limitations discovered in the claims, but none of these other changes are believed germane to the issues of patentability discussed in the interview.

The Examiner rejected Claims 18-35 under the judicially-created doctrine of obviousness-type double patenting. This rejection is respectfully traversed. As noted in a prior response, the terminal disclaimer already submitted in this case is believed to be effective, and this rejection should therefore be withdrawn. However, if these rejections should become the sole bar to allowance of the case, Applicants will submit a second terminal disclaimer to overcome the pending nonstatutory double patenting rejection, in a timely fashion.

The Examiner rejected Claim 32 as indefinite. Claim 32 has been cancelled, and this rejection is therefore moot.

The Examiner rejected Claims 20-23, 26-30, 33 and 35 under 35 U.S.C. 103(a)

as unpatentable over Forbes. These rejections are respectfully traversed. Forbes poses no bar to patentability of Claims 20-23, 26-30 or 36-42. Claims 33 and 35 have been cancelled, and so the rejections of these claims are moot.

Forbes discloses killing termites and other insects by insulating a structure, and heating the air inside to an elevated temperature as necessary to heat the wood of the structure to around 120° F, thereby killing the termites. Forbes discloses using a recirculating heater, which is placed either externally (Fig.1) or internally (Fig. 2) to the structure to be heated. Significantly, Forbes teaches away from the ventilation of heating gas during heating, by disclosing the conventional wisdom that:

It will be unnecessary to bring fresh air into the system during its operation. It is most economical simply to recirculate air which is already in the attic and in the heating system.

(Col. 2:50-53.)

Forbes fails to disclose or to suggest the extraction of dead organisms from the treated structure, and would simply leave the dead organisms (e.g., termites) in place. For example, Forbes fails to disclose or to suggest the step of "extracting said heated gas and dead organisms suspended therein from said enclosure by venting said heated gas during at least a substantial portion of said directing step," as defined by Claim 20. For further example, Forbes fails to disclose or to suggest the step of "venting said heated gas from said enclosed structure during at least a substantial portion of said maintaining step, to extract killed organisms from said interior portion," as defined by Claim 26.

Nor would it have been obvious to perform venting during heating to extract dead organisms, because Forbes teaches away from the ventilation of heating gas while the structure is being maintained at an elevated temperature. See, e.g., M.P.E.P. 2145 X. D. Indeed, the Examiner has already conceded this deficiency of Forbes with respect to the extraction of killed organisms, by proposing the combination with Montellano. See below.

Claims 20 and 26 are therefore patentable over Forbes, and the remaining ones of the rejected claims are patentable, as depending from a patentable base claim. These rejections should therefore be withdrawn.

The Examiner rejected Claims 18-19, 24-25, 31-32, and 34 under 35 U.S.C. § 103(a) as being unpatentable over Forbes in view of Montellano. These rejections are respectfully traversed. Nor do these references pose any bar to the patentability of Claims 36-42. The rejections are moot with respect to Claims 24-25, 31-32 and 34, which have been cancelled.

Montellano discloses a suction device for removing flying insects from buildings, thereby trapping them "until death ensues." (1:5-8; 2:95-102.) Montellano is not concerned with the removal of dead insects, mold, or bacteria, or with purifying a building by the application of heat. To the contrary, Montellano teaches that the inlets to the suction device should be placed near lights or incorporated in lamp fixtures, because flying insects are attracted to such areas. (1:26-46.) Since Montellano is principally concerned with the capture and removal of live, flying insects, it should be considered non-analogous art. One of ordinary skill would not have looked to Montellano to improve upon or modify a termite-eradication method as disclosed by Forbes, especially because Forbes teaches away from venting during heating. These two references simply concern different problems, and are not properly combined.

Moreover, even if the references are combined, Forbes and Montellano fail to disclose or suggest extraction of dead organisms from a heated enclosure "by venting during at least a substantial portion of said directing step," as defined by Claim 18. Similar limitations are present in Claims 20 and 26, which Forbes and Montellano likewise fail to disclose or suggest. For these additional reasons, Forbes and Montellano, even when combined, fail to disclose or suggest the invention. The remaining claims are also allowable, as depending from allowable base claims. These rejections should therefore be withdrawn.

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In view of the foregoing, the Applicants respectfully submit that Claims 18-23, 26-30 and 36-42 are in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested, and a timely Notice of Allowability is solicited.

If it would be helpful to placing this application in condition for allowance, the Applicants encourage the Examiner to contact the undersigned counsel and conduct a telephonic interview.

To the extent necessary, Applicants petition the Commissioner for a two-month extension of time, extending to June 12, 2004, the period for response to the Office Action dated January 12, 2004. The Commissioner is authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0639.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'BB' followed by a long horizontal stroke.

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